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JURISDICTION IN ACTIONS BETWEEN FOREIGNERS.[1]

SHOULD the courts of a country take jurisdiction of suits between foreigners just as they would of cases of the same nature arising between their own citizens? If a foreigner sues another foreigner in a court of a third state, may the defendant refuse to submit to the jurisdiction of the tribunal on the simple ground that neither he nor his adversary is a subject of the state in which it sits? And if the defendant is silent or expressly submits to the jurisdiction of the court, may the judge for that same reason refuse to hear the case?

This is a question of much practical importance. In an age like the present the development of international intercourse leads a continually increasing number of people to establish themselves for longer or shorter periods, sometimes for their whole lives, outside of their native countries. It is necessary that the standing of these people be clearly determined; that they know whether the courts are completely open to them, and whether they are assured of getting their rights in them, even against another foreigner.

As in certain aspects this question, although apparently one wholly between private parties, really involves the basic principles of the law of nations, it has seemed to me worthy the attention of the learned readers of the HARVARD LAW REVIEW, and I thought I could not better comply with the very gracious request of the editor than to take it as the subject of the article which he was pleased to ask from me.

[1] Translated by Mr. William C. Gray.

I.

I will say, first, that there is an apparently irreconcilable conflict regarding this subject between French and English-American decisions. By the common law in England and in America, of which judicial decisions are the great source, it is hardly recognized. The authors of the best repute scarcely mention it,[1] and from the small number of cases to which they refer, it can be seen that the governing principle is well established. This is the rule that the native and the foreigner are equal. Whenever by the rules as to jurisdiction within the state an English or American judge is obliged to take cognizance of a suit interesting any person, there is no reason to ask if this person is a foreigner or a native, for the rule is the same in either case. Therefore the defendant would not try to elude possible judgment by pleading his position as a foreigner; nor could the judge avoid taking jurisdiction by declaring that the parties were subjects of a foreign state.[2]

This great rule is perfectly well known to American jurists, and it is needless to speak of it further. In France it is quite otherwise. The Civil Code, which has regulated[3] the jurisdiction of French tribunals in suits between Frenchmen and foreigners (and has done so in a very partial spirit), has said nothing about their jurisdiction in suits between foreigners. It is therefore with us, as in England and America, left to decision; but this power has been used quite differently. After some years of hesitation, when there was hope that our tribunals would be freely opened, the French courts, the Court of Cassation leading, took the position that they are on principle without jurisdiction in suits between foreigners.[4] Since then the principle has been steadily maintained by them, and a searcher might count by hundreds the decisions of every rank unweariedly affirming the lack of jurisdiction of French courts in such suits. It is, to be sure, a peculiar lack of jurisdiction, hard to include in the ordinary classifica-

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[1] Dicey, Conflict of Laws, Rule 41 and Comment. American notes (4) p. 231.

[2] But, on the other hand, the English citizenship of the parties can give the English courts jurisdiction, although they would not have it by the other circumstances of the case. This at least can be inferred from the case of Scott *v.* Seymour, 1 H. & C. 219.

[3] Arts. 14, 15, 16.

[4] 4 Phillimore, Int. Law 726, describes the principle of our jurisprudence as a caricature of the idea of the independence of states.

tions. The defendant has the right to set it up and to compel the judge to give up the case, but he must make his objection before the trial is actually begun, *in limine litio*, otherwise he must go on and defend the suit. The judge may also refuse to hear the case, but he is not obliged to do so. If he prefer to retain it, there is nothing irregular, and a decision so given between two foreigners will not be disturbed by the Court of Cassation. Such, then, is the rule which is constantly applied with us.

It is not enough in law to lay down a principle to insure its observance; the principle must be one that suits the demands of life, for law is a social science whose rules acquire value only by strict conformity to the needs of society. By having failed to recognize this great truth, our jurisprudence has condemned itself here to furnish the pleasing and rather ridiculous spectacle of an architect tearing down piece by piece the building he has constructed. The principle once laid down, our judges have not wished to deny it, but they have narrowed it by making so many exceptions that its practical application has been reduced to a very small compass. That is not due to chance, and no one should be astonished. Whenever an international institution is directly contrary to the needs of international intercourse it has to suffer a number of exceptions before it completely disappears. So it was with the *droit d'aubaine*. In the eighteenth century it received so many limitations that the privilege became the regular rule, and the old incapacity to receive and to transmit, the very infrequent exception.

Let us see, therefore, how this principle has been narrowed. Certain states which have treaties with France assuring the citizens of each country free access to the courts of the other escape its application; so do foreigners who have the "authorized domicile" in France mentioned in Article 13 of the Civil Code. Besides, and most important, many matters of legal inquiry are placed by our decisions beyond the operation of this rule. In suits as to immovables, actions in which public order is concerned, and questions involving commercial obligations or provisional measures, French courts consider themselves competent to judge between foreigners. Sometimes, indeed, the mere circumstances of the case seem to them a sufficient reason for not applying the principle. Thus an incidental question between two foreigners is within the jurisdiction of the French courts when

it is connected with a principal action regularly before them; and, again, the principle yields when the plaintiff can prove that there is no foreign tribunal before which the action can be brought.

There are still other exceptions of less importance. Those just cited show sufficiently the breaches made in the principle and the slight importance of its application. It is interesting to note that of these numerous exceptions only one, the first, comes from a positive written law. All the others have no such support. Springing from the free action of the judges, they witness the impossibility they found of applying their general law to most cases.

II.

Of these two principles — one adopted in the common law countries and the other in France — which is the better? Unquestionably the former. English-American jurisprudence has had the rare merit of adopting at the outset and thenceforward strictly following the only rule which satisfies justice and the only one which meets the needs of international commerce. And that certainly ought not to be forgotten. We on the Continent do not hesitate to prefer greatly our law and decisions to the ancient customs which have kept their authority in English-American law. Whatever may be the merit of this claim, we ought at least to acknowledge that in the international administration of justice our laws, and especially those of France, are much inferior to that system which we do not hesitate to describe as backward.

What, in fact, is demanded by justice and this international intercourse which has become an indispensable factor in the existence of nations? It is that justice be freely accessible to foreigners; that they shall enjoy in this respect perfect equality with natives; in short, that a man's status as a foreigner shall never cause the failure of a suit brought before the proper judge, or be a means of his escaping a responsibility which he has properly incurred. Only in this way can the traveler, the merchant, the foreigner settled in another country, enjoy security of person and property, and make use without apprehension of the benefits of international intercourse. The rigorous exaction from the foreigner of sureties to guarantee his opponent against any possible wrong the suit may do him is neither difficult to understand nor entirely unjust. A foreigner, with no ties in the country where he brings his action, might by flight escape the obligations

which a reckless suit sometimes causes. That is a danger a legislator may rightly think it well to guard against; but one cannot justify or even understand the exclusion of a foreigner, merely because he is a foreigner, from the courts of justice before which the ordinary rules of jurisdiction would authorize him to appear.

This idea is strengthened if one examines the reasons on which the French courts found their refusal to take cognizance of suits between foreigners. These reasons, repeated a hundred times in the decrees, simmer down to two statements of greatly varying importance. The French courts, they say, were not established to dispense justice to foreigners, and they add that this extension of their jurisdiction would have the inconvenience of requiring them to apply foreign laws. I would be quite willing to call this second reason childishness. French courts not to apply foreign laws? They were established to declare the law; and if the principles of law demand that foreign laws be applied, one cannot see upon what pretext they would base their refusal. Moreover, it is possible that foreign law may be applicable to a suit between Frenchmen; it often is in disputes between Frenchmen and foreigners. It would not occur to the French judge to invoke this pretext to avoid deciding such suits. In what respect is it weightier when it is a question of suits between foreigners?

This so-called reason bears witness to the diffidence which our jurisprudence professes in regard to foreign laws; and we recall that this same mistrust causes our judges to regard every question of the application of foreign law as a pure question of fact whenever this application is not commanded by some French statute.

The first reason given is of very different value, and brings us to the heart of our subject.

The French courts were established to judge Frenchmen and not foreigners. That is an important statement, which deserves closer examination. Let us notice, first, that it rests on no statute. True, the law which established our Court of Cassation declared that the object of its institution was to insure unity in the interpretation of French law, but that does not at all mean that the French courts have not the duty of dispensing justice to foreigners. The courts, therefore, are not obliged to take this position, and I shall try to demonstrate that it is not sustainable, being contrary to the first duties of the state.

No one doubts that the function of dispensing justice is one of

the essential attributes of the state. Indeed, there is no interest of society greater than that. The *suum cuique tribuere* is the first condition of order and of peaceful society. The state, natural guardian of the rights of the individual and of those of society, could not under any pretext avoid this duty. And one will notice that, for order to exist, for the maintenance of the peace of society, it is not enough that exact justice be done to a certain number of men; it must be done to all under penalty of rendering social relations insecure. This security, this order, this peace, the state owes to foreigners as well as to its own citizens. By admitting them to its territory, by permitting them to pass through or to live within its borders, it tacitly engages to see to the security of their interests. But what security will there be if aliens cannot appeal to the courts on the same terms as others, and must be resigned to living outside the law, to being deprived of the means of obtaining its protection?[1]

It may be maintained, perhaps, that our decisions, by excepting the cases in which public order is concerned, meet this need and pay the debt of the state to the foreigner. To believe that would be pure delusion. The only cases which concern public order are those where it is important to the state that foreigners living within the territory may be brought before its tribunals or, on the other hand, make their complaints to them. Jurisdiction in criminal cases is the best example that can be given of such cases. It is evidently not to be admitted that a foreigner shall escape penal or civil responsibility for his crimes on the ground that, as his victim is another foreigner, the tribunals of the place cannot take cognizance of their disputes. Public order would be too evidently injured by such a decision; it would hardly be less injured if there were refused to the victim of a criminal or even a civil offense the power of making complaint to the courts of the state in whose territory the wrongful act was committed. But how many other cases present themselves where the refusal of the right of action to one foreigner in a contest with another results in a veritable denial of justice. In most cases men from a distance and long established in a country will find it impossible to secure the rights they claim if the local courts are not open to them. Must they

[1] We cannot therefore agree with Story (Conflict of Laws § 542) when he declares that this is a matter of internal policy and concerns no principle of international law. It is true that in § 557 *in fine* the same author uses appreciably different language.

to get justice travel hundreds or thousands of miles, leave their homes, and interrupt their business to scour the world in search of a judge with jurisdiction? They will find it easier to abandon their rights, but will think rightly that there is no true security for them in a country where they cannot obtain justice, and that in this respect they do not enjoy the advantages of international intercourse.

Considerations of another kind lead to the same result. In every civilized country aliens have so many rights that, putting aside political rights, one may say that their condition is not perceptibly inferior to that of citizens. In France, where our jurisprudence has remained faithful to the ancient distinction of the law of nations common to foreigners and to citizens and the civil law peculiar to the latter, the former of these categories includes the more numerous and the most important rights. Foreigners may acquire family rights (except that of adoption, little practised nowadays), become owners of everything in trade, contract, — in a word, are capable of almost all the acts of civil life. True, the legislation which will govern them will sometimes be foreign, but this circumstance, which may compel the exercise of greater care, cannot in the least deprive them of the enjoyment of the rights which French law grants them. But what does the legislature do when it allows a person to enjoy a certain right? It promises him that it will see to the protection of his right when he has acquired it by conforming to the conditions of the law. The promise of the legislature can have no other meaning; if it has not that, it has none at all. It is seen, then, that the granting of certain rights to foreigners implies an obligation on the legislature which has done it to give its protection to these rights in order to oblige everybody to respect them. But it is the courts that give the promised protection of the rights of private parties. To acknowledge a person's right and refuse the courts the power to protect it, is clearly inconsistent. It is taking away with one hand what the other gives.

That the matter has been looked at otherwise and our decisions have made this mistake, is the fault of the inexact idea our courts have of the right to appeal to a court. They consider it a distinct right, a civil right which they grant or refuse at pleasure. The truth is quite the contrary. To give the word "right" a positive meaning, one must understand that any right whatever includes the power to appeal to the courts to enforce respect for

it. The power to go to law is not a distinct right which can be denied to anyone without compromising the existence of all his rights. It is one aspect of these rights, or, more exactly, a phase of their existence, for any right may on occasion lead to a lawsuit, and unless suit is possible, there is only an apparent right. Carrying to its logical consequences the idea that the French tribunals were established for Frenchmen and not for foreigners would put the latter completely outside the law, and make their condition inferior to that of the slave of ancient times, who could sometimes, at least, claim against his master the protection of the magistrate.

The numerous modifications of this principle made by our decisions have enabled them to escape such absurdities, but the fact that these absurdities are its logical result is enough to condemn it.

Numerous treaties, commercial treaties especially, have clauses in regard to the rights which the subjects of each contracting party shall enjoy when in the other's country. A promise of free access to the courts is almost always mentioned among these rights. Thus diplomacy, more enlightened on this point than our domestic practice, shows that in its opinion there are no real rights other than those which may be enforced by a prompt appeal to the courts. Our jurisprudence has committed the grave mistake of forgetting this.

Thus, not only is English-American jurisprudence decidedly superior in this respect to that of France, but it must be said that one represents truth, the other error. It is a double error, as we have seen, — a fundamental error as to the duty of the state toward the foreigner, whose legal personality is respected only so far as the local tribunals are open to him on the same terms that they are to everybody else, and an additional error in interpretation of law, as it cannot be admitted that the granting of any right whatever to a foreigner does not carry with it the jurisdiction of the courts of the state, with power to give such right the public protection which is its strength. The international rule, the only just one, the only admissible one, is therefore that in every country there ought to be only one law as to jurisdiction, the same for foreigners and for natives. But what shall that law be, and how should it be defined to avoid giving rise to hopeless conflicts between states? The examination of this question will be the object of the third part of this article.

III.

If one reflects on the social function of the law, it appears that its aim is to assure to everybody as certain and as prompt protection of his legitimate interests as possible. A good international law as to jurisdiction ought to be brought forth by these needs, which are certainly more pressing in that field than within a nation. For if it is vexatious in the latter case for a pleader to be in doubt as to the judge to take jurisdiction of his case, it is more disastrous still in international relations, where he might have to seek the world over for a law that would seem to be fleeing from him. To assure international justice there must be a tribunal of competent jurisdiction for every case that may arise, and it is scarcely necessary to add that this tribunal ought to be pointed out by rules so clear that in general no doubt will exist to confuse and delay a suitor from the outset.

It is also necessary that there should be but one competent tribunal for a case, for having several results in conflict of decision and confusion as to rights. It clearly appears that such a result can be reached only by an international understanding. A state could not admit that its own tribunals ought to refuse to consider a case simply because it has been or is now before a foreign court. This is what we mean by saying that the objection of *lis pendens* does not extend from one nation to another. The agreement desired can be reached only as the different states adopt the same principles in regard to jurisdiction.

These fundamental needs are not the only ones to consider. It is necessary also, as a recent writer has especially well brought out,[1] that the action of the law be effective. And for this purpose, of several tribunals equally qualified, that one should be given jurisdiction which can most easily give its judgment suitable enforcement. In addition, regard must be had to the accessibility of the court to those amenable to it, so that they shall not be prevented by practical difficulties from taking their claims before the proper judge, and may without difficulty bring forward the evidence which will govern his decision.

With these premises we can continue our study and ask whether the English-American or the French system is nearer a general

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[1] Dicey, Conflict of Laws, General Principle III., Intr. p. 38 *et seq.*

type, capable of serving as a rule to determine jurisdiction in international matters.

There is little to say about French jurisprudence in this matter, for it is enough that a foreigner be a party to the action to cause exceptional rules as to jurisdiction to be applied. The French plaintiff always has the right[1] to bring his foreign opponent before the French tribunals, and the foreigner suing a Frenchman can, according to our law,[2] and should, according to the interpretation put on it by our judges, summon the defendant before them. In suits between foreigners, the subject of this article, our question cannot arise, since on principle these suits are outside the jurisdiction. When, however, our judges make an exception and consent to hear such suits, they follow the rules which are in force as to natives. Thus what in England is the rule is with us only the exception, — a very narrow exception, in truth, for it happens that many of the suits between aliens which are before our courts are governed by special and rather extraordinary rules as to jurisdiction. This is, for example, the case with suits governed by the Franco-Swiss Treaty of June 15, 1869, a treaty noted with us for the great difficulties of interpretation to which it has given rise.

Finally, our domestic laws are simple enough. They rest, as is well known, on two great rules of Roman origin, — the jurisdiction of the forum of the domicile in personal suits and actions as to movables, and the jurisdiction (so natural that one might call it necessary) of the tribunal of the *situs* in actions as to immovables. For the convenience of commerce merchants may lay their cases before the judge of a place where a promise was made or goods delivered, and of the place where payment should have been made.[3] In civil matters Article 59 authorizes a certain number of exceptions to the principles laid down. These apply to circumstances where application of the principles is impossible, as when several defendants in one action have no common domicile, or to cases where it is especially convenient to have the same class of matters brought before one judge. Matters of inheritance, of bankruptcy, of suretyship, make up this class. Finally, parties may by appointing their domicile agree on a certain tribunal before which to bring their disputes.

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[1] Art. 14, Civil Code.

[2] Art. 15.

[3] Art. 420, Code of Civil Procedure.

Artificial persons (associations invested with a legal personality) are subject on principle to the same rules of jurisdiction as natural persons.

The English-American system (*fassent les Immortels conducteurs de ma langue que je ne dise rien qui puisse être repris*) seems a little more complicated. English jurists put on an equality principles which have very different weight. Thus the questions of jurisdiction over divorce, validity of marriage and legitimacy, and of bankruptcy, succession, and administration are of a rather exceptional character. The nature of the interests demands the application of special rules of jurisdiction, either because it is convenient that a single judge have before him all the suits relative to a single legal matter (succession, bankruptcy), or because a certain judge may be better placed than others to appreciate the weight of the respective claims of the parties. Above these rules of an exceptional nature there are some general principles. They are the jurisdiction of the *forum rei sitæ* over immovables,[1] and the rule laid down for actions *in personam*. Let us dwell on this latter. Actions *in personam* are the most common of all, and in dealing with them the English-American practice differs most from the ideas held on the Continent, especially in France.

Jurisdiction of English courts of justice over personal actions depends on rules quite different from those which governed Roman, and still control French law. More than that, the very spirit of these rules and the manner of their construction belong to systems very far apart. In France (as formerly in Rome) one asks first if the French courts have jurisdiction; this primary question out of the way, the law gives the complainant a way of summoning his opponent before the tribunal which is to judge him. In England and in America the process is reversed; one seeks first to find out if the writ of summons (*l'assignation*) can be legally delivered to the person wanted (personal service) or something equivalent done (substituted service).[2] Then, once it is established that the writ can be regularly served, the jurisdiction of the English courts naturally follows. In France we should call that putting the cart before the horse.

The two great traditional rules of English law in regard to jurisdiction are thus described: Whenever the defendant, even

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[1] Dicey, Conflict of Laws, Rule 43.

[2] When in an action *in personam* the rule as to the legal service of a writ defines the limits of the court's jurisdiction. Dicey 234.

if only passing through the country, is found on English soil, so that in consequence the writ of summons can be personally served, the English courts can take cognizance of the personal actions which concern him. And conversely, in principle at least (for this second rule is far from being as absolute as the first [1]), whenever the writ cannot be delivered to the defendant personally, because he is not on English soil, the English courts have no jurisdiction over him. We do not think these rules could form the basis of a good international system of jurisdiction. They represent for us the law of a period when the working of justice was uncertain, its means of action few and limited, and when the first condition of obtaining the satisfaction demanded from a debtor was the ability to put your hand on his collar. At that same time the magistrates of our *parlements* were obliged to leave their seats to watch personally over the execution of their decrees. It is common knowledge that this was the origin of the judicial vacations. Moreover, it must be noticed that in those old days the arrest of the body was the common right, so that the presence of the debtor at the bar of the tribunal was usually a sufficient guarantee to the creditor of the effective execution of his judgment. Times have changed, however. To eyes not accustomed to these things by the daily course of practice such principles seem very extraordinary, and in fact the presence of the debtor cannot always be a good reason for passing judgment upon him. If this presence is purely accidental, the judgment thus rendered will perhaps not be consistent with the interest of the creditor, of the debtor, or even of justice. The French rule of jurisdiction — the tribunal of the domicile — is certainly better. It is the one which best regards the security of the defendant, which secures the judge best fitted to decide the suit, and in the greatest number of cases insures the effectiveness of the judgment. In a certain sense English jurisprudence recognizes the superiority of this last principle, and uses it largely in matters of divorce and legitimacy. Moreover, it does not regard the mere presence of the defendant within the territory of the court as an international principle of jurisdiction, and when in England the question is one, not of deciding a case, but of giving effect to a foreign judgment, the judges decide the jurisdiction of that foreign court by con-

[1] *Cf.* Dicey, Conflict of Laws, Rule 45; and 4 Phillimore, International Law 724.

sidering not merely the presence of the defendant, but other less accidental circumstances as well. Domicile of the defendant within the territorial jurisdiction of the court is one of these.

The jurisdiction of the court of the place over immovables and of that of the domicile over personal actions and movables seems the principle on which the nations might come to an agreement. Adding to these two chief rules of jurisdiction that of the forum chosen by the parties when they have beforehand designated their judge, there would seem to be a simple and satisfactory system of general principles. Of these three rules, the first and the last are everywhere recognized; between French and English-American jurisprudence there is a difference only as to the second. One may think there is nothing insuperable in this difference.

But this is not enough. We know that practical needs in all countries lead the legislatures to decree certain exceptions to the rules of jurisdiction they have adopted. In this field likewise an agreement is desirable; upon what basis could it be put? It seems that the desired unity can be obtained only by reducing the exceptions to indispensable cases. It might still happen, therefore, that in the same country the rules of jurisdiction would not be identical for suits between natives and those in which foreigners were concerned. That would be a real inconvenience, but a much smaller one than results from a multiplicity of competent jurisdictions or from the lack of them.

The study of English decisions seems fitted to teach us the number and the good sense of the exceptions to be admitted. We know already that a writ of summons cannot be delivered to a person who is out of the territorial limits of the court. This principle, however, has some modifications. There is a certain number of cases in which the judge may authorize the plaintiff to serve process out of the jurisdiction. It is almost useless to remark that the judge, whose power to do this is discretionary, will authorize such exceptional procedure only when his jurisdiction rests upon some especially serious considerations. Therefore the list of cases in which service out of the jurisdiction is permitted is of a kind to show us what exceptions it would be well to make to our general rules.

But we also find in English decisions a means of attaining greater precision and of setting up a sort of counter-proof; that is the examination of the cases which consider foreign courts to have jurisdiction and order the execution of their judgments. If

we enumerate the cases of service out of the jurisdiction as shown by the Rules of the Supreme Court of 1883, we find that they relate to the following actions: actions regarding immovables situated within the territory over which there is jurisdiction or against persons domiciled or ordinarily residing there; actions concerning the succession to the property of one dying domiciled within the territorial jurisdiction; actions arising from a contract that should be executed there, or intended to prevent or remedy a tort in the same place; actions naturally joined to another against a defendant who has been regularly served. This is our first criterion. Let us now look at the second. Here the task is harder, for there are no well settled rules in English law on this point. Westlake even shows with suitable proof that the older cases rested on no fixed rule, and confined themselves to following the suggestions of natural justice.[1] More recent decisions are little more distinct and are not easy to analyze. The most certain point, however, is that one who has voluntarily accepted a foreign jurisdiction will be unwelcome if he disputes it before an English court. This voluntary submission may appear in several ways. It sometimes results from a contract made between the parties, sometimes from the fact that the loser himself began the action in a foreign court, and most often from the fact that the defendant in such a suit appeared without objection. One may also say that the courts of the country of which the defeated party is a subject or resident have jurisdiction.[2] But this word "resident," borrowed from the celebrated case of Schibsby *v.* Westenholz, gives rise to difficulty. Does it mean the simple fact of presence on the soil, and is this presence, which would be enough, as we have seen, to give jurisdiction to an English court, enough to make certain and effective in England the jurisdiction of a foreign court? Dicey inclines to the opinion that it is; Westlake is more doubtful.[3] If I may be permitted to express an opinion, I will suggest that the language of the judge applies better to a residence equivalent to domicile than to a mere sojourn, for he speaks of a residence procuring to him who proves it the benefit of the laws of the country or imposing on him the duty of a temporary allegiance to its sovereign. Does not this apply solely to domiciled foreigners? There can be seen in the most recent English decisions a certain

[1] Westlake, Private International Law 344.

[2] See the opinion of Fry, J., in Roussillon *v.* Roussillon, Dicey, *loc. cit.* 372.

[3] Dicey, *loc. cit.* 374; Westlake, *loc. cit.* 344.

tendency to take account, in considering the jurisdiction of foreign courts, of the *forum contractus celebrati*, especially if there is joined with it some other favorable circumstance, such as the fact that the place of making a contract is also that of its execution.[1] If an idea of strict reciprocity always enlightened the minds of jurists and magistrates, the cases in which they recognize the jurisdiction of others would be exactly the same as the ones in which they claim it themselves. It has not been so, however, and English jurisprudence shows itself much more positive in asserting its own jurisdiction than in recognizing that of others. It would be wrong to reproach it for this, however. It is a failing common to all judges of all countries. Yet it is certain that we ought to hold as best established the cases of jurisdiction having both this domestic and foreign recognition. It is only in these cases that the need is met as adequately as it would be in special courts. May there be other cases? Perhaps, at least so far as a true necessity seems to justify them.[2]

We will confine ourselves to these very general hints, not pretending to exhaust a subject large enough to fill volumes. If a lesson can be drawn from these few pages, it is simply this: the French and English-American laws, so absolutely opposed in this matter of jurisdiction, would find every advantage in coming to an understanding and uniting on a general law which would be a satisfactory compromise. Is this change possible; or would it clash too strongly with the individuality of the states concerned? These questions I leave to those more able than I. The hydrographers inform us that the British Channel is not a very deep body of water; perhaps it would be possible to build this bridge between the two countries while waiting for another. And it would be of great importance. Until the world can be brought to accept a single system of private international law — and in spite of the progress in that direction of late years it seems that a very long time will pass before that ideal will be attained — the laws applied to any subject will vary with the tribunal before which it comes. The establishment of clear-cut laws in regard to jurisdiction, easily

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[1] Westlake, *loc. cit.* 345.

[2] It will be noticed that these two exceptions to the general rules as to jurisdiction are accepted in the Franco-Belgian treaty of July 8, 1899. This treaty, the provisions of which might usefully be consulted when considering the drawing up of an agreement as to jurisdiction, establishes also special courts in matters of guardianship, succession, and bankruptcy. On these special points, again, it is probable that an agreement might be had.

understood and universally respected, would allow everyone to know by what law he will be judged. The lack of certainty in the law would be so much diminished. Is not lessening the uncertainty of law one of the most signal services we can render to private interests?

A. Pillet.

UNIVERSITY OF PARIS, February 6, 1905.